

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Norfolk Division



RYRICKA NIKITA CUSTIS, #1207403,

Petitioner,

v.

ACTION NO. 2:17cv476

HAROLD W. CLARKE,
Director of the Virginia
Department of Corrections,

Respondent.

FINAL ORDER

Petitioner, a Virginia inmate, filed a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254, alleging violations of federal rights pertaining to his convictions on February 29, 2008, in the Circuit Court for Accomack County for robbery, use of a firearm, and possession of a firearm by a felon. ECF No. 1. As a result of the convictions, Petitioner was sentenced to serve forty years in the Virginia penal system. *Id.*

The petition was referred to a United States Magistrate Judge for a report and recommendation pursuant to the provisions of 28 U.S.C. § 636(b)(1)(B) and (C) and Local Civil Rule 72 of the Rules of the United States District Court for the Eastern District of Virginia. The Magistrate Judge's Report and Recommendation filed June 29, 2018 recommends that Respondent's motion to dismiss be granted, and Custis' petition be dismissed without prejudice to

Custis' right to present his claims after obtaining an order from the Court of Appeals for the Fourth Circuit. ECF No. 23. Custis filed objections to the findings and recommendations on July 10, 2018. ECF No. 24. On July 31, 2018, the Court of Appeals for the Fourth Circuit denied Custis' request for authorization to file a successive petition. ECF No. 25.

The Court, having reviewed the record and examined the objections filed by Custis to the Report and Recommendation, and having made *de novo* findings with respect to the portions objected to, does hereby adopt and approve the findings and recommendations set forth in the Report and Recommendation in part.

It is, therefore, **ORDERED** that Respondent's motion to dismiss, ECF No. 13, be GRANTED, and the petition for a writ of habeas corpus be denied and dismissed with prejudice. It is further **ORDERED** that Judgment be entered in favor of Respondent.

Petitioner may appeal from the Judgment entered pursuant to this Final Order by filing a notice of appeal with the Clerk of this Court, United States Courthouse, 600 Granby Street, Norfolk, Virginia 23510, within thirty days from the date of entry of such Judgment.

Petitioner has failed to demonstrate "a substantial showing of the denial of a constitutional right," therefore, the Court declines to issue any certificate of appealability pursuant to Rule 22(b) of the Federal Rules of Appellate Procedure. See *Miller-El v.*

Cockrell, 537 U.S. 322, 335-36 (2003).

The Clerk shall mail a copy of this Final Order to Petitioner and to counsel of record for Respondent.

/s/ 

Mark S. Davis
United States District Judge

Mark S. Davis
UNITED STATES DISTRICT JUDGE

Norfolk, Virginia
September 17, 2018